

IT'S THE LAW: Rights to Light



Light travels at a whopping 299,792,458 metres per second. It takes just over 8 minutes to get from the sun to the earth. So light being emitted from the sun now will be arriving just after you've finished reading this edition of It's the Law.

What?

A Right to Light is a right to enjoy natural light passing over someone else's land (the servient land) to windows or other 'apertures' in a building on another piece of land (the dominant land). 'Apertures' is just a fancy word for holes (glass doors, skylights and glass roofs are all possibilities). A greenhouse can benefit from a Right to Light. So can a building with glass curtain walls. In those cases the apertures in question make up most, if not all, of the wall. A bare piece of land can't acquire a Right to Light (because there are no holes for the light to travel through) but it can still benefit from rights left over from a building now demolished.

How much?

Once a Right to Light has been established, the dominant owner is entitled to receive sufficient natural light to enable the comfortable use of the rooms in their building. That means when deciding whether a Right to Light has been interfered with:-

- it's a question of how much light is left, not how much light is being blocked; and
- the use of the dominant land is important – a greenhouse is entitled to more light than a warehouse.

Surveyors have generated rules of thumb to establish how much light is enough. Whilst it's difficult to predict with accuracy what a Court will say, these rules are helpful in guessing the result.

The most commonly adopted rule of thumb was set out by Mr Percy Waldram over 100 years ago. Percy reckoned that the normal amount of light received from the unobstructed sky was 500-foot candles. That doesn't refer to the light received from a 152 metre tall candle – it refers to the amount of light you'd be receiving if you were sitting one foot away from 500 candles. Percy defined the 'grumble point' (meaning the point below which a clerical assistant would start to grumble that it was too dark) as 0.2% of unobstructed light. That's light equivalent to one foot-candle. The rule of thumb was that if over half of the room fell below this level then the room had insufficient light for comfortable use.

So what does this mean to the servient owner?

A Right to Light is what's known as a negative easement. It enables the dominant owner to stop the servient owner doing things. The dominant owner is entitled to have natural light passing over the servient land – so that means that the servient owner can't build on their land in a way that interferes with that right.



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A Right to Light can be created by express grant, by implication or by prescription.

Express grant: this most commonly arises when someone sells just part of the land they own and either expressly grants the buyer a Right to Light or expressly reserves one for the benefit of the land the seller is retaining. Equally it's possible for a Right to Light to be granted by one landowner to another in the absence of any other transaction. Either way, the key is that the right is documented in a formal deed. It will almost always be registrable at the Land Registry.

Implied grant: this is a 'fuzzy' area of the law. But by way of example; say I'm fabulously wealthy, Downton Abbey wealthy, but have fallen on hard times so have to sell you the gatehouse to my estate. It's likely, even if we hadn't said anything in the transfer, that a Court would hold that it was implied that the windows in the gatehouse had Rights to Light over my estate.

Prescription: easements can arise by prescription where a landowner makes use of a neighbour's land for a long period of time. There are three ways in which Rights to Light can arise by prescription.

Firstly, at common law. This requires continuous use since 1189. As you might guess, this is rarely used.

Secondly, by lost modern grant. If the light has been used for 20 years openly, continuously, without force and without permission - then the Court will pretend that a deed was entered into, but that it's been lost.

Thirdly, under the Prescription Act 1832. This says that a Right to Light will arise if the light has been enjoyed for the period of 20 years before a claim is made. Only an interruption for a year or more or the written consent of the servient owner will prevent the right being acquired.

What you going to do about it?

A dominant owner can go to Court and seek two different remedies if their Right to Light is, or is going to be, infringed. Firstly they can seek an injunction ordering the servient owner not to build (or to take down what they've already built). Secondly they can claim damages.

Rights to Light have existed for hundreds of years. Developers had gotten used to them. Broadly the view was that if you'd gone through the planning process and started building then, whilst you might still be liable for damages, a Court was unlikely to award an injunction. So developers factored in possible damages as a financial contingency and got on with it. If they were risk averse they insured against possible claims. That was all changed by a case in 2010: HKRUK II (CHC) Ltd v Heaney. In the Heaney case the Court ordered

CHC to remove 2 floors from their building after it had been built. Panic ensued within the development world.

So what should developers do?

Before buying a site to develop, check whether any nearby land has a Right to Light. Check the title deeds and physically inspect the area. Note that once a building has acquired a Right to Light, the right may remain after the building has been demolished. So even cleared sites may benefit from a right. Note that it's not just adjoining land that might benefit from a Right to Light. If in any doubt commission an expert to prepare a report.

Right to Light issues are completely different from daylight and sunlight planning policies. So just because you've ticked the planning box doesn't mean your neighbour can't get an injunction.

It's sometimes possible to insure against the risk. This is more difficult than it was before Heaney. It will almost certainly be impossible if you've tipped off your neighbours that they may have rights. So don't approach any neighbours until you've ruled this out as an option – and make sure the expert we've just suggested you commission doesn't go round announcing what they're doing.

Think the unthinkable. Don't assume that there is a solution. Make sure you undertake your due diligence before you commit to buying the site and, if necessary, negotiate a price reduction or walk away from the deal.

The earlier in the process that you consider these issues the wider your options – and the less wasted costs if it turns out that the problems are insurmountable.

The tiny print

This is one of a series of leaflets published by Devonshires Solicitors' Real Estate & Projects Department aimed at our developer clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

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